

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART XX. Texas Workforce Commission

CHAPTER 800. General Administration

The Texas Workforce Commission (Commission) proposes new §§800.101, 800.102, 800.112-800.115, 800.118-800.119, 800.151-800.152, 800.161, 800.171-800.177, 800.181-800.182, and 800.191, concerning the Incentive Award and Sanctions Rules.

The Texas Government Code §302.021 gave the Commission the authority and responsibility for administering twenty eight workforce programs in Texas. In order to meet that responsibility, the Commission proposes Incentive Award and Sanctions Rules to assist local programs in meeting performance requirements and encouraging a high level of performance.

The rules provide for an adjustment model to be used to adjust the incentive measures for local conditions. The methodology proposed is based on the experience and logic of a model used by the federal government in a workforce training program. The methodology is based on a statistical technique called multiple regression analysis which addresses the relationship between the outcome and several explanatory factors. The relationship with each explanatory factor is determined while taking into account its relationship with all the other factors. Each adjustment weight represents how much the outcome can be expected to change with a one-unit change in an explanatory factor, while holding the other explanatory factors constant. The influence of a set of explanatory factors can be determined by summing the influence of each explanatory factor. Economic factors in the local areas which may be considered in the adjustment model include unemployment rate, three-year growth of earnings in retail and wholesale trade, annual earnings in retail and wholesale trade, employment in manufacturing, agriculture and wholesale trade, population density, percentage of families below the federally established poverty level, and employer/resident worker ratio. The data sources for the local economic factors are calculated from Bureau of Labor Statistics and Bureau of Census reports. Client characteristics which may be considered include the percentage of two-parent Temporary Assistance to Needy Families (TANF) families, education level, length of time on the welfare roll, gender, age, and ethnic groups. The proposed rules describe procedures used by the Commission to provide incentive awards. Section 800.101 states that the purpose of the incentive award rules is to recognize Local Workforce Development Boards (boards) which have achieved a high level of performance. Section 800.102 defines terms used in the incentive award rules. Section 800.112 lists the criteria used by the Commission in making incentive awards. Section 800.113 describes the non-monetary awards which may be made by the Commission. Section 800.114 describes the possible monetary awards. Section 800.115 lists the factors considered by the Commission and a method of calculation used by the Commission to adjust incentive measures to ensure that the local conditions of each board are taken into consideration in the granting of incentive awards. Section 800.118 describes the distribution of incentive awards. Section 800.119 describes the requirements in the use of incentive award funds.

The proposed rules also describe the sanctions which may be imposed by the Commission in the case of violations. Section 800.151 states that the purpose of the rules is to increase the accountability of the boards and to ensure that performance requirements are met. Section 800.152 defines terms used in the sanctions rules. Section 800.161 describes the preventive maintenance provided by the Commission in the form of technical assistance, program and fiscal monitoring as well as quality assurance reviews. Section 800.171 lists some possible level one sanctions which may be imposed by the Commission. Section 800.172 lists some possible level two sanctions. Section 800.173 lists some possible level three sanctions. Section 800.174 lists some violations which might subject a board to level one sanctions. Section 800.175 lists some

violations which might subject a board to level two sanctions. Section 800.176 lists some violations which might subject a board to level three sanctions. Section 800.177 describes program specific sanctions. Section 800.181 describes the procedures used by the Commission to enforce sanctions. Section 800.182 describes notice requirements. Section 800.191 describes appeal procedures. Randy Townsend, Director of Finance, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed incentive awards and sanctions rules. Mr. Townsend has certified that there will be no foreseeable impact on local economies or overall employment as a result of enforcing or administering the proposed incentive awards and sanctions rules. Alan Miller, Director of Workforce Development, also has determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be increased accountability and successful performance by the local programs. There is no anticipated adverse impact on small business as a result of enforcing or administering the proposed incentive awards and sanctions rules. There are no anticipated economic costs to persons who are required to comply with the rules as proposed. All official comments submitted to Barbara Cigainero will be considered before the final rules are adopted. Comments on the proposed rules may be submitted to Barbara Cigainero, Deputy Director of Operational Services, Texas Workforce Commission Building, 101 East 15th Street, Room 130BT, Austin, Texas 78778, (512) 936-3395. Comments may also be submitted via fax to Ms. Cigainero at (512) 463-3424 or e-mailed to: bcigaine@twc.state.tx.us. Comments must be received by the Commission by 5:00 p.m. on February 10, 1998, for consideration.

#### SUBCHAPTER D. Incentive Award Rules

40 TAC §§800.101-800.102, 800.112-800.115, 800.118-800.119

The new sections are proposed under Texas Labor Code §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposed rules affect Texas Labor Code Chapter 302.

#### §800.101. Scope and Purpose.

(a) The purpose of the incentive is to reward Local Workforce Development Boards (boards) that meet the stated goals of the Commission to increase the local control of workforce development programs and to put Texans to work. The board is responsible for providing strategic planning for the local area for all workforce development programs consolidated into the Texas Workforce Commission (Commission). The development of an integrated and coherent workforce development system at the local level is the primary focus of boards. Thus, this policy seeks to recognize boards for achieving high performance as a system, as well as high performance on behalf of the populations annually targeted by the Commission during the budget process. Incentives will emphasize accountability, high performance, continuous improvement and support the state in achieving workforce development goals.

(b) This rule incorporates the existing rule for performance standards for the Job Training Partnership Act Program cited in 40 TAC 805.160. State variation of performance standards established by the U. S. Department of Labor and/or state standards shall be published in the Texas Register on an annual basis in a numbered TWC Letter.

#### §800.102. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

Core Outcome Measures--Workforce Development Program performance measures

adopted by the Governor and developed and recommended through the Texas Council on Workforce and Economic Competitiveness (TCWEC). TCWEC Core Outcome Measures have been adjusted to allow for a follow-up period of six months in lieu of the one year period established by TCWEC.

Earnings Gains Measure--The average earnings of persons employed during the post-placement follow-up periods (six months) compared to the average earnings of the same persons six months prior to program entry.

Employment Measure--The annual percentage of individuals who entered unsubsidized employment subsequent to participation in job preparation services, who remained employed (by the same or another employer) six months after entering employment.

Employment Security Offices--The state agencies established under the U. S. Employment Service which was created by the Wagner-Peyser Act, 29 U.S.C.A. 49 et seq.

Skill Attainment-Target--The annual target specified by the Commission based upon the percentage of individuals who completed skill attainment activities and acquired a skill as recognized by the state or an industry in the form of an achievement as specified below:

- (1) board certification of youth/adult competency levels as specified by Job Training Partnership Act §106a(5);
- (2) a high school diploma;
- (3) GED certificate;
- (4) post secondary education degree;
- (5) occupational license;
- (6) occupational certification; or
- (7) other certifications recognized by the state.

TANF Earnings Gains Measure--The average earnings of Temporary Assistance for Needy Families (TANF) Participants employed during the post-placement follow-up periods (six months) compared to the average earnings of the same persons six months prior to program entry.

TANF Employment Measure--The annual percentage of TANF individuals served who entered unsubsidized employment subsequent to participating in job preparation services, who remained employed (by the same or another employer) six months after entering employment.

TANF Skill Attainment Target--The annual target specified by the Commission based upon the percentage of TANF individuals who completed skill attainment activities and acquired a skill as recognized by the state or an industry in the form of an achievement as specified below:

- (1) board certification of youth/adult competency levels as specified by Job Training Partnership Act §106a(5);
- (2) a high school diploma;
- (3) GED certificate;
- (4) post secondary education degree;
- (5) occupational license;
- (6) occupational certification; or
- (7) other certifications recognized by the state.

Workforce Development Programs--job-training, employment and employment-related educational programs and functions as listed in Texas Labor Code §302.021.

High Performance Achievement--The top five boards as ranked by performance outcomes, adjusted for regional economic conditions according to the model cited in §800.114 of this title.

Caseload Reduction--The number of percentage points by which the annual average monthly number of families receiving TANF cash assistance has declined in a Local Workforce Development Area (LWDA) during the performance period as specified in TWC Letter ID/NO WD 88-97, "Incentive Policy Adjustment Model."

Local Workforce Development Boards--A board that is certified by the Governor of the State of Texas, has a plan approved by the Governor of the State of Texas,

and is operating multiple workforce development programs through an executed contract with the Commission.

Incentive Award Pool--Funding that the Commission shall reserve during the annual budget process in sufficient amount to use to reward boards for high performance achievement.

#### §800.112.Criteria for Award.

(a) To encourage system building and accountability in meeting the needs of employers and jobseekers, the state will apply four outcome measures to establish a high performance recognition. The four outcome measures are:

- (1) Employment Measures -- retention in employment for six months following placement;
- (2) Earnings Gains Measures -- earnings over the same period;
- (3) Skill Attainment Measures -- work-related skills attained and documented by credentials accepted by states or industries; and
- (4) Caseload Reduction -- percentage decrease in TANF households. (3) (3) Each board will be evaluated on these core outcome measures for high performance recognition.

(b) In order to be eligible to receive an incentive, a board must be within 90% of the variance range established for each contract performance measure.

#### §800.113.Non-Monetary Incentive Awards.

(a) Non-monetary awards for high performance achievement and continuous improvement in meeting performance measures may include, but are not limited to, plaques, certificates of achievement, or other formalized recognition accolades.

(b) To be eligible for a non-monetary incentive award, a certified board must be one of the five outstanding performers for any one of the four specified core outcome measures.

(c) Non-monetary incentive awards will be awarded annually based on performance beginning in Fiscal Year 1998, which commenced September 1, 1997.

(d) A board or center may be recognized as an outstanding performer under more than one measure.

#### §800.114.Monetary Incentive Awards.

(a) Monetary incentives will be distributed to boards based on high performance achievement to a targeted population, and may be used to carry out innovative workforce investment activities consistent with state and federal requirements as determined by the Commission.

(b) In awarding monetary incentives, the Commission shall give priority to boards which are high performance achievers in serving targeted populations. Monetary incentives will reward up to five top performing boards based on high performance in meeting a goal to be annually adopted by the Commission in the budget process.

(c) Monetary incentive awards will be awarded annually based on performance beginning in Fiscal Year 1999, commencing September 1, 1998.

#### §800.115.Incentive Policy Adjustment Model.

(a) Incentive measures will be adjusted to assure that they are neutral with respect to local conditions.

(b) Adjustment factors considered shall be limited to economic factors, labor market conditions, geographic factors, and client characteristics.

(c) The adjustment rates shall be calculated for each of the LWDAs. The calculated rates shall be used to produce adjusted performance standard rates for each of the LWDAs.

(d) The adjusted outcome measures specified in §800.112 of this title will be published in the Texas Register prior to the award of incentive grants.

§800.118.Distribution of Incentive Awards.

The monetary Incentive Award Pool will be awarded to the top five boards meeting or exceeding their targeted performance measures for the targeted populations.

§800.119.Use of Funds.

Boards that receive an incentive award shall use the incentive award to carry out innovative workforce investment activities as approved by the Commission. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 29, 1997.

TRD-9717176

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: February 2, 1998

For further information, please call: (512) 463-8812

SUBCHAPTER E.Sanctions Rules

40 TAC §§800.151-800.152, 800.161, 800.171-800.177, 800.181-800.182, 800.191

The new rules are proposed under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposed rules affect Texas Labor Code Chapter 302.

§800.151.Scope and Purpose.

The purpose of this subchapter is to ensure accountability of Local Workforce Development Boards (boards) in meeting the needs of employers and jobseekers, ensure performance in reaching outcome measures, ensure adequate returns on state investments and support the state in achieving its goals.

§800.152.Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

Performance Standard--A numerical value setting the minimum acceptable result to be achieved for a performance measure.

Level One Sanction--The sanction that the Texas Workforce Commission (Commission) may impose as a response to a contractual breach and/or failure to comply with specific state and federal requirements and Commission policies.

Level Two Sanction--The sanction that either the Commission or the Texas Council on Workforce and Economic Competitiveness may impose as a response to a severe problem and the potential negative impact such a problem may have on the local workforce development area or the state.

Level Three Sanction--The sanction that the Commission may impose where a severe and/or continued failure to comply with state and/or federal laws, regulations or Commission policies has gone uncorrected.

§800.161.Preventive Maintenance.

Preventive maintenance measures, developed to ensure program outcome and provide fiscal accountability, include technical assistance, timely and effective program and fiscal monitoring, and quality assurance reviews.

(1) Technical assistance is performance-driven and outcome-based, stressing the sharing of information and best practice models. The focus is on providing assistance to front-line staff as they deliver basic services. Assistance is provided for both fiscal and program issues.

(2) Program and Fiscal Monitoring assistance may include site visits, desk

reviews, and analysis of both financial and program outcomes to help identify potential weaknesses before such weaknesses result in sub-standard performance or questioned costs. Monitoring may result in recommendations that provide practical solutions that can be used to take immediate corrective action.

(3) Quality Assurance assistance includes routine evaluation of essential quality indicators and certification systems and will be enhanced with timely and relevant professional training to help develop and maintain the knowledge, skills, and abilities required across program lines.

#### §800.171.Level One Sanctions.

Level one sanctions may result in, but are not limited to, one or more of the following actions:

- (1) the requirement that the board participate in technical training and quality assurance workshops designated by the Commission;
- (2) development and implementation of a formal corrective action plan to address the weaknesses identified;
- (3) submission of additional and/or more detailed financial and/or performance reports;
- (4) designation as a high-risk board requiring additional monitoring visits; and
- (5) repayment of disallowed costs.

#### §800.172.Level Two Sanctions.

Level two sanctions may result in, but are not limited to, one or more of the following actions:

- (1) imposition of one or more level one sanctions;
- (2) restrictions on ability to draw down funds;
- (3) possible delay, suspension, or denial of contract payments;
- (4) prohibition on the use of contracted service providers;
- (5) advance approval of actions required by the Commission;
- (6) formal Commission representation at all board meetings; and
- (7) reduction of grant or contract allocations in future periods.

#### §800.173.Level Three Sanctions.

Level three sanctions may result in, but are not limited to, one or more of the following actions:

- (1) imposition of one or more level one sanctions;
- (2) imposition of one or more level two sanctions;
- (3) deobligation of current year funds;
- (4) contract cancellation or termination; and
- (5) submission and Commission approval of a corrective action plan.

#### §800.174.Violations Subject to Level One Sanctions.

Violations which may result in the imposition of level one sanctions include, but are not limited to, the following:

- (1) failure to attain and/or maintain annual performance within 90% of established contracted standards;
- (2) failure to attain and/or maintain annual participation rates within 90% of established contracted standards;
- (3) failure to submit required financial and/or performance reports;
- (4) failure to take corrective action to resolve findings identified during monitoring, investigative or program reviews;
- (5) failure to rectify and/or resolve all independent audit findings and/or questioned costs within required timeframes;
- (6) failure to submit the annual audit required by OMB Circular A-133, as may be amended;
- (7) breach of administrative and service contract requirements; and
- (8) failure to retain required service delivery and financial records.

§800.175. Violations Subject to Level Two Sanctions.

Violations which may result in the imposition of level two sanctions include, but are not limited to, the following:

- (1) failure to rectify a level one sanction within 180 days of notice;
- (2) committing a second violation within the same fiscal year;
- (3) failure to rectify reported threats to health and safety of program participants within 30 days of notice;
- (4) failure to attain and/or maintain annual performance within 75% of established contracted standards; and
- (5) failure to attain and/or maintain annual participation rates within 75% of established contracted standards.

§800.176. Violations Subject to Level Three Sanctions.

Violations which may result in the imposition of level three sanctions include, but are not limited to, the following:

- (1) failure to rectify a level one sanction within 360 days of notice;
- (2) failure to rectify a level two sanction within 180 days of notice;
- (3) committing three or more level one violations or two or more level two violations within the same fiscal year;
- (4) failure to rectify reported threats to health and safety of program participants within 90 days of notice;
- (5) failure to return annual performance to 75% of established contracted standards within two program years; and
- (6) failure to return annual participation rates to 75% of established contracted standards within two program years.

§800.177. Program Specific Sanctions.

Failure of a board to meet its targeted Temporary Assistance to Needy Families (TANF) participation rate for two consecutive quarters may result in a reduction in the TANF allocation in an amount not to exceed 25% of the funding allocated to the Local Workforce Development Area. Funds retained by the Commission as a result of such a reduction in allocation shall be used to provide technical assistance to the sanctioned board.

§800.181. Enforcement.

- (a) The specific sanction(s) to be imposed by this policy shall be determined by Commission staff.
- (b) The Commission shall work in concert with the Texas Council on Workforce and Economic Competitiveness, whenever necessary, to impose sanctions as required by the Texas Government Code, §2308.268 and §2308.269.
- (c) The Commission shall send a written notice of pending sanctions indicating the violation, the corrective action, and the impending sanction.
- (d) The written notice shall be sent to the board chair and the chief elected official of the Local Workforce Development Area.
- (e) The Commission shall send the written notice at least five working days in advance of the effective date of the sanction.

§800.182. Notice.

- (a) The date of notice shall be the date the facsimile transmission (fax) notice is sent to the board. If transmitted or recorded as delivered after 5:00 p.m., the next business day will be considered the date of notice.
- (b) All administrative violations and enforcement fee notices will be sent by the following methods:
  - (1) facsimile (fax) transmission for all notices;
  - (2) letter by regular mail for violations subject to a level one violation; and
  - (3) letter by certified mail, return receipt requested, for level two or level

three violations.

§800.191.Appeal.

- (a) Boards or subrecipients may appeal the decision of the Commission.
- (b) Requests for appeal must be submitted within ten days of the date of notice to the General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 674, Austin, Texas 78778.
- (c) Requests for appeal will be referred to a hearing officer. The hearing officer will receive oral and written evidence from both parties and prepare a written proposal for decision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 29, 1997.

TRD-9717177

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: February 2, 1998

For further information, please call: (512) 463-8812